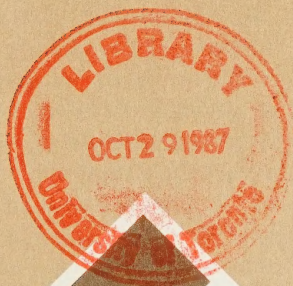



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The Labour Relations Act:

*Certification by
the Ontario Labour
Relations Board*





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What is certification?

Certification by the Ontario Labour Relations Board is a way in which employees can become entitled to engage in collective bargaining. Collective bargaining is the process by which a group of employees, through a trade union, negotiate with their employer and attempt to reach an agreement establishing their wages, hours of work and other terms and conditions of employment. Their agreement, which is called a 'collective agreement', governs the relationships between the employer, the employees and their trade union for a specified period of time.

What is the Labour Relations Act of Ontario?

The *Labour Relations Act* provides a legal framework for the conduct of orderly collective bargaining between employers and employees through their trade union. The Act provides a means through which a group of employees can choose a trade union to represent them as their collective bargaining agent and compel their employer to recognize and bargain with the trade union they have selected as their bargaining agent. The Act contains a number of provisions regulating the bargaining process, the contents of collective agreements and the timing of strikes and lock-outs. The Act also sets out what are considered to be unfair labour practices on the part of employers, trade unions and employees and provides the mechanisms for obtaining remedies for such conduct.

Does collective bargaining have government approval?

Yes! The *Labour Relations Act* recognizes the right of employees to join unions of their choice and participate in their lawful activities. The preamble to the *Labour Relations Act* states: '. . . it is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees.'

Does the Labour Relations Act apply to all persons working in Ontario?

While the *Labour Relations Act* does apply to the vast majority of employees working within the province of Ontario, some employees are covered by their own special legislation, while other employees are excluded from coverage by the *Labour Relations Act* altogether. The *Labour Relations Act* does not apply to an employee coming within any of the following categories:

Members of a police force

Members of a police force, including civilian employees, may engage in collective bargaining under the *Police Act*. However, security guards are subject to the *Labour Relations Act*, even if they are sworn in as special constables.

Full-time firefighters

Collective bargaining by full-time firefighters is governed by the provisions of the *Fire Departments Act*.

Teachers

Teachers employed by school boards or boards of education under the *Education Act* may engage in collective bargaining under the provisions of the *School Boards and Teachers Collective Negotiations Act*. University and private school teachers are covered by the *Labour Relations Act*.

Community college employees

Community college employees may engage in collective bargaining under the *Colleges Collective Bargaining Act*.

Provincial government employees

The *Crown Employees Collective Bargaining Act* sets out the terms under which civil servants employed by the government of Ontario engage in collective bargaining.

Hospital employees

Employees of conventional hospitals and institutions that are deemed to be hospitals such as nursing homes or homes for the aged are covered by both the *Labour Relations Act* and the *Hospital Labour Disputes*

Arbitration Act. The latter Act prohibits hospital employees from striking and their employers from locking them out and also provides for compulsory arbitration of collective bargaining disputes.

Persons employed in industries or occupations regulated by the federal government

The *Labour Relations Act* of Ontario does not apply to federal government employees nor to persons employed by federally regulated industries such as inter-provincial transportation or communication (for example, railways, shipping lines, airlines or telephone companies), banks, television and radio stations and grain elevators. Those persons are governed by legislation passed by the federal government.

Miscellaneous groups

Other specific groups of persons excluded from coverage by the *Labour Relations Act* are:

- domestic workers employed in private homes.
- farmers, hunters, and trappers.
- horticultural workers employed by an employer whose primary business is horticulture.

The *Labour Relations Act* does not apply to the following persons *except in certain limited circumstances*:

- members of the architectural, dental, land surveying, legal or medical professions employed in a professional capacity.
- persons who exercise managerial functions.
- persons employed in a confidential capacity in matters relating to labour relations.

If a dispute arises as to whether a person comes within any of these categories, the Ontario Labour Relations Board has the authority to decide the issue.

What is a trade union?

A trade union is an organization comprised exclusively of employees *entirely independent of employer influence or support*, which is formed for purposes that include the regulation of relations between the employees it represents and their employers.

How do trade unions obtain bargaining rights?

There are two methods. The first, and the most common, is certification by the Ontario Labour Relations Board. Certification by the Board means that the Ontario Labour Relations Board has declared or 'certified' that the trade union is the exclusive bargaining agent for a group of employees in a defined unit which the Board considers appropriate for collective bargaining. This unit is known as the 'bargaining unit'.

The second method of obtaining bargaining rights is voluntary recognition. Voluntary recognition means that the employer agrees in writing to recognize the trade union as the exclusive bargaining agent for a group of its employees in a bargaining unit defined in the voluntary recognition agreement. This is done without government supervision and is common in the construction industry. A voluntary recognition agreement is valid and binding provided that the trade union represented or had as members, a majority of the employees in the defined bargaining unit at the time the employer and the trade union signed the agreement, and at that time, no other trade union held the bargaining rights for the employees in that bargaining unit.

When can a trade union apply for certification?

If no other trade union holds bargaining rights for the employees affected, the application can be made at any time. However, if the employees are already covered by a collective agreement, but want to change trade unions, they may apply during the last two months of operation of the agreement, if the agreement is for three years or less. If the agreement is for longer than three years, then an application for certification can be made in the last two months of the agreement's third year of operation or in the last two months of each subsequent year of its operation.

What happens when a trade union applies for certification?

When it receives the application, the Board informs both the trade union and the employer of the date of the hearing. Generally, hearings are held at the Board's office at 400 University Avenue, Toronto, Ontario. In cases where complications might arise, or a number of witnesses have to be heard, the hearing may be moved to a more convenient location outside Toronto.

Are the affected employees notified of an application for certification?

Yes! The Board makes certain that the employer posts Form 6 'Notice to Employees of Application For Certification and of Hearing before the Ontario Labour Relations Board'. This ensures that the employees are informed about the details of the application. The form also provides instructions to employees who wish to make their views known to the Board.

How is the bargaining unit determined?

The Board decides the unit of employees that is appropriate for collective bargaining. When a trade union applies for certification, it does so for a unit it claims to be appropriate. The employer, in turn, has the opportunity to reply to the application. In this reply, the employer may propose the same unit or a different bargaining unit. If both trade union and employer propose the same unit, it will generally be accepted by the Board. The Board, however, makes the final decision.

Once a bargaining unit has been determined, how does the Board decide whether to certify the trade union?

A trade union is certified when it is able to show that the majority of employees in the appropriate bargaining unit want it to be their bargaining agent. Majority support can be proved by means of signed membership cards or by a representation vote or by both.

Once the Board has found out the number of employees in the bargaining unit, how does it determine how many of them are union members?

The trade union must file evidence of membership in the union on or before the terminal date. Special care is taken to keep this information secret from the employer.

What is the terminal date?

The terminal date is set by the Board. It is normally seven to ten days following the date the application for certification was received. This is the date by which trade unions applying for certification must file their membership evidence and employees who wish to comment upon or oppose the application for certification must file their statements of desire. Material sent by registered mail on or before the terminal date is considered to have been filed as of the date of mailing.

What percentage of the employees in the bargaining unit must belong to the trade union for it to be certified?

Generally, if less than 45 per cent of the employees in the unit are members of the trade union, the Board must dismiss the application, unless the trade union has made an application for a pre-hearing vote, in which case, only 35 per cent of the employees must be members. If more than 55 per cent of the employees are trade union members, then the Board will usually certify the trade union without a representation vote, unless the trade union has made an application for a pre-hearing vote. If, however, between 45 and 55 per cent of the employees have joined the trade union, the Board must conduct a representation vote. The Board will then certify the trade union only if more than half of the ballots cast are marked in favour of the trade union.

Example: If there are 100 employees in the unit, which the Board determines is appropriate, you will need at least 45 valid membership cards to be entitled to a vote, 56 cards to be entitled to automatic certification and 35 cards to be entitled to a vote under the pre-hearing vote procedure.

Chart showing membership support required in certification application

	Percentage support among employees in the bargaining unit as indicated by the number of membership cards submitted in support of the application	How the Board will deal with the application
Normal Certification Procedure	-less than 45% of the total number of persons in the bargaining unit	-application will be dismissed
	-45% to 55% of the total number of persons in the bargaining unit	-a representation vote will be held to determine if a clear majority are in favour of the union
	-more than 55% of the total number of persons in the bargaining unit	-the Board will normally certify without ordering a representation vote, but a vote may still be held if the Board considers it advisable to do so
Special Rules where Applicant requests a prehearing vote	-less than 35% of the total number of persons in the bargaining unit	-application will be dismissed
	-35% or more of the total number of persons in the bargaining unit	-a representation vote will be held to determine if a clear majority are in favour of the union

There are three important exceptions to these rules. Firstly, if another trade union represents the employees, the Board will generally order a vote, even when the union applying to be certified has signed up more than 55 per cent of the employees. In such a vote, the employees are given the choice of which

union they wish to have represent them. *Secondly*, if the employer has violated the *Labour Relations Act*, so that in the opinion of the Board the employees are unable to freely express their true wishes, the Board may certify the trade union, even though the union has less than 45 per cent of the employees as members or even if the union has lost the representation vote, provided that the Board finds the membership that the union does have is adequate for purposes of collective bargaining. *Thirdly*, the Board has a discretion to order a representation vote where it is satisfied that a timely statement of desire opposing the certification of the trade union is signed voluntarily by a sufficient number of employees so as to raise a doubt whether the union continues to have the unqualified support of more than 55 per cent of the employees in the bargaining unit.

Can an employee withdraw his support from a union after becoming a member, but before the union is certified?

By filing a 'statement of desire' with the Board, an employee may, in some circumstances, be able to prevent his or her membership evidence from being relied upon to issue a certificate without a representation vote.

What form must a statement of desire take?

There is no standard form. Whatever form the statement takes, it must be signed by the employee or group of employees concerned. As a minimum, the statement must name the employer and union involved and state clearly that the employee or employees who have signed it are opposed to the applicant union being certified.

Can an employer suggest that employees file a statement of desire or assist in its preparation?

No! The Board will reject any statement of desire that is not clearly a voluntary expression of the signing employee or employees and entirely free from employer influence.

How do you prove that a statement of desire does not have management support?

If the statement of desire will affect the certification process by forcing the holding of a vote, the Board will call upon the objecting employees to prove that the statement is voluntary.

A representative of the signing employees must appear and call witnesses to testify under oath about how the statement of desire originated (whose idea it was, who drafted it and where) and about the manner in which each of these signatures was obtained. This means that evidence must be given about the circumstances under which each employee signed the statement of desire by someone who was present at the time. Through all this, the Board makes certain that the names of the employees on the statement of desire are not revealed to the employer or the union. Reference is made only to a number placed beside each of the signatures by the Board.

The persons who present the evidence at the hearing will be questioned by the Board, and may be questioned by the representatives of the union and the employer. If at the end of the enquiry the Board is not satisfied that the statement of desire is a voluntary expression of the employees who signed, it will be disregarded.

More detailed information concerning the *Labour Relations Act* and procedures relating to applications for certification may be found in the Board's publication entitled '*A Guide to the Labour Relations Act*'.



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Note:

This pamphlet is prepared for purposes of convenience only. In order to ascertain your strict legal rights, reference should be made to the *Labour Relations Act* and regulations and Board decisions.